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SENATE BILL 22 By
Cohen

HOUSE BILL 135
By Head

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, Part 21; Title 62 and Title 67, relative to agents for athletes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, Part 21, is amended by deleting §§ 49-7-2111, 49-7-2112, 49-7-2113, 49-7-2114, 49-7-2115, 49-7-2116, 49-7-2117, 49-7-2118, 49-7-2119, 49-7-2120 and 49-7-2121 in their entirety and by substituting instead the following:

Section 49-7-2122. This act shall be known and may be cited as the "Uniform Athlete Agents Act of 2001".

Section 49-7-2123. As used in this part, unless the context otherwise requires:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term "athlete agent" does

not include a spouse, parent, sibling, grandparent or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(8) "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to the provisions of this act.

(11) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(12) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport.
Section 49-7-2124.

(a) A person who does business in this state as a athlete agent, regardless of whether such person is registered pursuant to this part, shall by so doing consent to the jurisdiction of the courts of this state, shall be subject to suit in this state and shall be deemed to have appointed the secretary of state as such person's agent to accept service of process in any civil action related to such person doing business as an athlete agent that is commenced against such person in this state.

(b) The secretary of state may issue subpoenas for any material that is relevant to the administration of this act.
Section 49-7-2125.

(a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this state without holding a certificate of registration under §§ 49-7-2127 or 49-7-2129.

(b) Before being issued a certification of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(2) Within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

Section 49-7-2126.

(a) An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. An application filed under this section is a public record. The application shall be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and shall include:

(1) The name of the applicant and the address of the applicant's principal place of business;

(2) The name of the applicant's business or employer, if applicable;

(3) Any business or occupation engaged in by the applicant for the last five (5) years prior to the date of submission of the application;

(4) A description of the applicant's:

(A) Formal training as an athlete agent;

(B) Practical experience as an athlete agent; and

(C) Educational background relating to the applicant's activities as an athlete agent;

(5) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;

(6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the last five (5) years prior to the date of submission of the application;

(7) The names and addresses of all persons who are:

(A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

(B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;

(8) Whether the applicant or any person named pursuant to subdivision (7) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony; if so, the jurisdiction, offense and year of conviction;

(9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (7) has made a false, misleading, deceptive, or fraudulent representation;

(10) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in the

interscholastic or intercollegiate athletic event on a student-athlete or educational institution; if so, the name of the student-athlete or educational institution and the year of the sanction, suspension or declaration of ineligibility;

(11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (7) arising out of occupational or professional conduct; and

(12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (7) as an athlete agent in any state; if so, the jurisdiction and year of denial, suspension, revocation or refusal to renew registration.

(b) An individual who has submitted an application for, and holds a certificate of registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The secretary of state may accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(1) Was submitted in the other state within six (6) months of the application submitted in this state and the applicant certifies that the information contained in the application is current;

(2) Contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

The secretary of state may demand a letter detailing any information required pursuant to the provisions of this part not contained in the application form from the other state.

Section 49-7-2127.

(a) Except as otherwise provided in subsection (b), the secretary of state shall issue a certificate of registration to an individual who has submitted the requisite fee in accordance with § 49-7-2130 and has complied with the provisions of § 49-7-2126(a) or whose application has been accepted pursuant to § 49-7-2126(b).

(b) The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:

- (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
- (2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
- (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
- (4) Engaged in conduct prohibited pursuant to § 49-7-2135;
- (5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;
- (6) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an

interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(7) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under subsection (b), the secretary of state shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred;

and

(3) Any other relevant conduct of the appellant.

(d) An athlete agent may apply to renew a registration by submitting the requisite fee in accordance with § 49-7-2130 and by submitting an application for renewal in a form prescribed by the secretary of state. An application filed under this section is public record. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

(e) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d), upon submission of the requisite fee in accordance with § 49-7-2130, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state may accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(1) Was submitted in the other state within six (6) months of the filing in this state and the applicant certifies that the information contained in the application for renewal is current;

(2) Contains information substantially similar to, or more comprehensive than, that required in an application for renewal submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

The secretary of state may demand a letter detailing any information required pursuant to the provisions of this part not contained in the renewal form from the other state.

(f) A certificate of registration or a renewal of registration is valid for one (1) year.

(g) Any registration pursuant to this part shall automatically expire, without notice, on the expiration date set forth on the registration.

(h) A certificate of registration issued to an athlete agent is not transferable.

Section 49-7-2128.

(a) The secretary of state has authority to suspend, revoke or refuse to renew a registration for any conduct that would have justified denial of registration pursuant to § 49-7-2127 or for any one (1) or more violations of this part.

(b) A violation of this part shall be brought to the attention of the secretary of state by written complaint filed by any educational institution or student-athlete aggrieved by the violation. If the secretary of state finds from the complaint that there is reasonable cause to believe a violation of this part has occurred, the secretary of state shall commence an athlete agent registration

revocation or suspension proceeding. Such a proceeding shall be considered a contested case hearing and shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Section 49-7-2129. The secretary of state may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Section 49-7-2130.

(a) An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

(1) Two hundred fifty dollars (\$250) for an initial application for registration for the first agent, plus an additional fifty dollars (\$50.00) for applications for each additional athlete agent practicing in association with the first agent where such additional agent lists the first agent in association pursuant to § 49-7-2126(a)(7);

(2) Two hundred fifty dollars (\$250) for an application for registration based upon a certificate of registration or licensure issued by another state;

(3) Pursuant to § 49-7-2141, one hundred dollars (\$100) for an application for registration based upon a permit in good standing issued in this state prior to July 1, 2001, at the time for the permit's annual renewal;

(4) One hundred dollars (\$100) for an application for renewal of registration; or

(5) One hundred dollars (\$100) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

(b) All fees submitted for registration, or renewal of registration, pursuant to the provisions of this part, are nonrefundable regardless of whether the secretary of state issues or denies registration or renewal of registration.

(c) All fees collected pursuant to the provisions of this part shall be used by the secretary of state to defray the costs of administering this part.

(d) In addition to the fees provided in subsection (a), an athlete agent, registered pursuant to the provisions of this part, is subject to the provisions of § 67-4-1702.

Section 49-7-2130.

(a) An agency contract shall be in writing and shall be signed, or otherwise authenticated, by the parties in the presence of a notary public who shall duly notarize the same.

(b) An agency contract shall contain:

(1) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received, or will receive, from any other source for entering into the contract or for providing the services;

(2) The name of any person not listed in the application for registration, or renewal of registration, who will be compensated because the student-athlete signed the agency contract;

(3) A description of any expenses that the student-athlete agrees to reimburse;

(4) A description of the services to be provided to the student-athlete;

(5) The duration of the contract;

(6) The address of the athlete agent to which notices, including notice of cancellation pursuant to § 49-7-2133, shall be sent; and

(7) The date of execution.

(c) An agency contract shall contain, in at least ten (10) point, bold face type, the following language, which shall be read by the athlete agent to the student-athlete and initialed and dated by the student-athlete:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN SEVENTY-TWO (72) HOURS AFTER ENTERING INTO THIS CONTRACT BOTH YOU AND YOUR ATHLETE AGENT SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN TWENTY (20) DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

[Initials of Student-Athlete]

[Date]

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(e) A duly signed and notarized copy of the contract shall be furnished to the student-athlete at the time of execution.

(f) Any contract executed pursuant to the provisions of this part shall be governed by the laws of the state of Tennessee.

Section 49-7-2132.

(a) Within seventy-two (72) hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give written notice of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within seventy-two (72) hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall give written notice to the athletic director or the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

(c) Failure by the student-athlete to provide the notification required pursuant to subsection (b) may subject the student-athlete to disciplinary action in accordance with the educational institution's rules and regulations for student conduct.

Section 49-7-2133.

(a) A student-athlete may cancel an agency contract by giving written notice of the cancellation to the athlete agent within twenty (20) days after the contract is signed.

(b) A student-athlete may not under any circumstances effect a waiver of the right to cancel, and any attempted waiver of the right to cancel shall be ineffective.

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Section 49-7-2134.

(a) An athlete agent shall retain the following records for a period of five (5) years:

(1) The name and address of each individual represented by the athlete agent;

(2) Any agency contract entered into by the athlete agent; and

(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) Records required to be retained pursuant to subsection (a) are open to inspection by the secretary of state during normal business hours.

Section 49-7-2135.

(a) An athlete agent, with the intent to induce a student-athlete to enter into any agency contract, shall not:

(1) Give any materially false or misleading information or make a materially false promise or representation;

(2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent shall not intentionally:

(1) Initiate contact with a student-athlete unless registered under this act;

(2) Refuse to permit inspection of the records required to be retained pursuant to § 49-7-2134;

(3) Fail to retain the records required to be retained pursuant to § 49-7-2134;

(4) Fail to register when required pursuant to § 49-7-2125;

(5) Provide materially false or misleading information in an application for registration or renewal of registration; or

(6) Predate or postdate an agency contract.

(c) An athlete agent shall not:

(1) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport;

(2) Fail to post the athlete agent's certificate of registration, or legible copy thereof, in each office in this state from which the athlete agent conducts business as an athlete agent; or

(3) Fail to provide proof of registration to any student-athlete whom the athlete agent contacts.

Section 49-7-2136. A violation of any provision of § 49-7-2135 is punishable as follows:

(1) A first offense is a Class A misdemeanor punishable by a fine of not more than three thousand five hundred dollars (\$3,500) or confinement for not more than eleven (11) months and twenty-nine (29) days, or both; and

(2) A second or subsequent offense is a Class E felony punishable by a fine of not more than five thousand dollars (\$5,000) or confinement for not less than one (1) year nor more than six (6) years, or both.

Section 49-7-2137.

(a) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this act.

(b) Damages of an educational institution under subsection (a) include, but are not limited to, losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) An education institution that prevails in a suit brought under this section may recover:

(1) Actual damages;

(2) Punitive damages;

(3) Court costs;

(4) Reasonable attorney's fees; and

(5) Treble damages for any violation of this part which results in any ineligibility of a student-athlete to compete, in an amount equal to three (3) times the value of the athletic scholarship furnished by the institution to the student-athlete during the student-athlete's period of eligibility.

(d) An action under this section shall be commenced by the aggrieved institution within three (3) years of the date damages to the institution resulting from a violation of this part are discovered or reasonably should have been discovered, whichever date is sooner.

(e) If both are at fault, the student-athlete and athlete agent shall be jointly and severally liable for any damages awarded to an institution for a violation of the provisions of this part that occurred during such student-athlete's period of eligibility.

(f) This act does not restrict rights, remedies, or defenses of any person under law or equity.

Section 49-7-2138. The secretary of state may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of this act. Any hearing on the imposition of any fine pursuant to the provisions of this section shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Section 49-7-2139. This part does not apply when a student is ineligible to participate in a particular intercollegiate sport unless:

(1) The student-athlete's eligibility to participate is restored in that particular sport; or

(2) The student is or becomes eligible to participate in a different intercollegiate sport, in which case this part shall apply for the different intercollegiate sport.

Section 49-7-2140. Nothing in this part shall:

(1) Prevent a student-athlete from relinquishing such athlete's eligibility to compete in intercollegiate athletics and then signing an agent contract; or

(2) Impair the validity of an agency contract entered into prior to July 1, 2001.

Section 49-7-2141. Any person holding a permit in good standing as a "sports agent" in this state prior to July 1, 2001, shall be deemed an "athlete agent" and subject to the provisions of this part. A permit in good standing shall be valid until the permit's

regular annual renewal at which time the agent shall apply for a certificate of registration and shall pay all applicable fees pursuant to § 49-7-2130.

Section 49-7-2142. It is the intent of the general assembly that in applying and construing the Uniform Athlete Agents Act of 2001 due deference be given to the need to promote uniformity of the law with respect to athlete agents among the several states to the extent consistent with the provisions of this act.

SECTION 2. Tennessee Code Annotated, Section 67-4-1702(a), is amended by deleting subdivision (3)(F) in its entirety.

SECTION 3. Tennessee Code Annotated, Section 67-4-1702(a), is amended by adding the following language as a new, appropriately designated subdivision:

(6) Persons registered as athlete agents pursuant to Title 49, Chapter 7, Part 21.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2001, the public welfare requiring it.